

FEB 24 1967

In the United States Court of Appeals  
for the Ninth Circuit

VIRGINIA HEINZ AND UNITED STATES OF AMERICA,  
APPELLANTS

v.

C. S. HEINZ, JR., ENTERPRISES, ET AL., APPELLEES

On Appeal from the Order of the United States District  
Court for the Southern District of California

BRIEF FOR THE UNITED STATES

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**In the United States Court of Appeals  
for the Ninth Circuit**

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No. 19,984

**VIRGINIA HEINZ AND UNITED STATES OF AMERICA,  
APPELLANTS**

*v.*

**C. S. HEINZ, JR., ENTERPRISES, ET AL., APPELLEES**

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**On Appeal from the Order of the United States District  
Court for the Southern District of California**

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**BRIEF FOR THE UNITED STATES**

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**OPINION BELOW**

The District Court wrote no opinion. Its oral opinion (V-R. 31-36)<sup>1</sup> and order affirming the order and adopting the findings of the referee (I-R. 141-144) are not officially reported.

**JURISDICTION**

This proceeding involves separate appeals by Virginia Heinz and the United States. On January 28, 1964, C. S. Heinz, Jr., Enterprises, a limited partner-

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<sup>1</sup> I-R-V-R. references are to Volumes I-V of the record on appeal.

ship, and Clifford S. Heinz, Jr., individually and as a general partner, filed a petition for an arrangement under Chapter XI of the Bankruptcy Act, as amended. (I-R. 2-18.) Pursuant to Sections 22 and 331 of the Bankruptcy Act, as amended, the proceeding was referred to a referee in bankruptcy. (I-R. 2, 19.) In March and April, 1964, the Internal Revenue Service made a jeopardy assessment of income taxes asserted to be owing by Heinz and his wife, Virginia, for 1956 of interest (Ex. 12) and for F.I.C.A. taxes owed by Heinz and the partnership for the fourth quarter of 1963 (Ex. 13), filed notices of its tax liens in Pennsylvania and California (Exs. 14, 15, 16), and levied upon the Pennsylvania trustee of spendthrift trusts of which Heinz is the income beneficiary (Ex. 11).<sup>2</sup>

In the meantime, in April and October, 1963, Virginia Heinz brought attachment proceedings in a Pennsylvania State court against her husband's interests in the spendthrift trusts to satisfy an unpaid judgment awarded to her by the California state court for temporary alimony and child support. (Exs. 1A-H, 2A-F, 3A-B.) The United States intervened in the Pennsylvania State court proceedings.

In response to applications by the receiver and Heinz (I-R. 20-24, 25-26, 27-31, 46-50), the referee in the arrangement proceedings on September 18,

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<sup>2</sup> Pursuant to a stipulation between the United States, Heinz and his wife, the Tax Court on December 2, 1964, entered a decision determining a deficiency in income taxes for 1956 of \$162,366.52 plus interest. There is no dispute between the parties that the amount of F.I.C.A. taxes owing is \$131.26.



1964, ordered the receiver to administer Heinz' interests in the spendthrift trusts as assets of the arrangement estate free of and superior to the claims of Heinz, his wife and the United States, and restrained the United States, Virginia Heinz and Heinz from proceeding in the Pennsylvania State court with the attachment proceedings and from asserting any claim, e.g., for taxes or alimony and child support, against the trustee of the spendthrift trust inconsistent with the referee's order. (I-R. 87-94.)

Within the extended period granted by the referee under Section 39c of the Bankruptcy Act, as amended (I-R. 95-98, 112-113), timely petitions for review of the referee's order by the District Court were filed by Virginia Heinz on October 15, 1964 (I-R. 99-102, 111), and by the United States on October 19, 1964 (I-R. 114-116, 125). Pursuant to jurisdiction allegedly conferred upon it by 28 U.S.C., Section 1334, and Section 23 of the Bankruptcy Act, as amended, the District Court entered its order and amended order on February 3, 1965, and February 18, 1965, respectively, affirming the order of the referee. (I-R. 141-144.) Within sixty days thereafter, on March 3, 1965, Virginia Heinz and the United States filed separate notices of appeal. (I-R. 224-225, 233-235.) Jurisdiction is conferred upon this Court by 28 U.S.C., Section 1291, and Section 24 of the Bankruptcy Act, as amended.

### QUESTION PRESENTED

Whether a federal tax lien and levy upon a taxpayer's income interest in a state-protected spend-

thrift trust is precluded by Chapter XI bankruptcy proceedings.

### STATUTES INVOLVED

The pertinent provisions of the Internal Revenue Code of 1954, the Bankruptcy Act, as amended, are set forth in the Appendix, *infra*.

### STATEMENT

The individual debtor, Clifford S. Heinz, Jr., is a beneficiary of two spendthrift trusts created in Pennsylvania by a Pennsylvania settlor and administered by a Pennsylvania trustee. (I-R. 88.)<sup>3</sup> Together with his two sisters Heinz is an income beneficiary for life of a spendthrift trust created in 1937 by his stepmother. Only the income from this trust is available to him, and he does not have any right to the trust corpus. (Ex. 5.) In addition, Heinz and his two sisters each have a one-ninth interest in the income of a spendthrift trust created by their stepmother in 1948. The income from this trust terminates at their stepmother's death. (Ex. 6.)<sup>4</sup>

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<sup>3</sup> In the proceedings below the referee found (I-R. 88) that Heinz was the beneficiary of three spendthrift trusts created in 1929, 1937 and 1948. However, an examination of the trust agreements (Exs. 4, 5 and 6) indicates that only the 1937 and 1948 trusts had spendthrift provisions, and that Heinz possessed only a remainder interest in the 1929 trust.

<sup>4</sup> The 1948 spendthrift trust was carved out of a testamentary trust created in 1935 by Heinz' father in which Heinz' stepmother received the income for life, but the voting rights in the shares of stock comprising the corpus of the trust were



Heinz and his wife were involved in divorce proceedings in California. In October, 1962, the California State court ordered him to pay \$3,500 a month to his wife for temporary alimony and child support. Apparently Heinz became delinquent in making these payments. (I-R. 88-89.) Accordingly, in 1963 Virginia Heinz brought two foreign attachment actions in the Court of Common Pleas of Allegheny County, Pennsylvania, to collect from the 1948 and 1937 spendthrift trusts \$24,475 allegedly owing to her for support for the period from November, 1962, to March, 1963, and to impose a continuing lien on the income accruing to Heinz from both trusts until his liability arising under the California judgment became discharged. (I-R. 88; Exs. 1A-H, 2A-F, 3A.) Thereafter, in August, 1963, Heinz and his wife stipulated and the California State court ordered (R. 89; Ex.

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assigned to a brother of the decedent. Two nephews of the decedent were remainder beneficiaries. The 1948 spendthrift trust was established by Heinz' stepmother, whereby she assigned for her lifetime one-third of her income in the testamentary trust to Heinz and his two sisters. (Ex. 6.)

Although it is not part of the record in this proceeding, it appears that one of the remaindermen of the 1935 testamentary trust predeceased the life tenant, Heinz' stepmother, without leaving lineal descendants. A settlement was reached by various members of the Heinz family whereby Heinz and his two sisters obtained a remainder interest in the deceased nephews' share.

Heinz and his two sisters each have a one-third vested remainder interest in a trust created in 1929 by their father, in which their mother is the life beneficiary. (Ex. 4.) Heinz does not have any present right to the income from this trust during the lifetime of his mother. Apparently, this is the trust which the referee mistakenly held (I-R. 88) to be spendthrift.

3B) a reduction in temporary alimony and child support payments to \$2,500 per month, commencing November 1, 1963; the trustee of the spendthrift trusts was authorized to release to Heinz' wife accrued and unpaid trust income and future trust income in a total amount of \$42,000 to satisfy the California judgment, and certain additional amounts were awarded out of the trust income for attorneys' fees and unpaid rentals. The Pennsylvania State court proceedings brought by Virginia were to be continued until after January, 1964, and the parties agreed not to delay the California divorce proceedings.<sup>5</sup>

On January 28, 1964, Heinz and the partnership, C. S. Heinz, Jr., Enterprises, filed a petition for an arrangement under Section 322 of Chapter XI of the Bankruptcy Act. (R. 2-18, 89).<sup>6</sup>

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<sup>5</sup> In compliance with the stipulated order, it appears that the amounts payable through January, 1964, were in fact paid in full by the trustee to Virginia Heinz and her attorneys. The referee found on this point as follows (I-R. 88):

9. After compliance with the said stipulated Order in said California divorce action of August 30, 1963, the first delinquency by said HEINZ in payment of child support and alimony under the said Order of October 18, 1962 occurred in connection with the payment due on February 1, 1964, which delinquency, among other subsequent delinquencies, continues to the present time.

10. As of the date of the filing of the Petition in Bankruptcy herein, to wit, January 28, 1964, HEINZ was not in default in payment of alimony and child support under the said California divorce action Order dated October 18, 1962.

None of the parties have questioned these two findings.

<sup>6</sup> The partners of C. S. Heinz, Jr., Enterprises, appear to be Heinz and his wife and certain members of his family, in-

Previously, the Internal Revenue Service had issued a 90-day statutory notice of deficiency for income taxes owing by Heinz and his wife, Virginia, for 1956 in the amount of \$330,919.77, plus \$137,145.84 of interest, for a total amount of \$468,065.61, from which the taxpayers filed a petition with the Tax Court. On March 13, 1964, approximately one and one-half months after the arrangement petition had been filed, the Service made a jeopardy assessment against Heinz and his wife for the income taxes and interest. (I-R. 89-90, Ex. 12.)<sup>7</sup> On March 27, 1964, the Service assessed withholding of income and F.I.C.A. taxes for the fourth quarter of 1963 alleged to be owing by the partnership and Heinz in the net amount of \$131.26. (I-R. 89-90; Ex. 13.) Notices of federal tax liens in the amount of \$468,211.10<sup>8</sup> were filed with the Recorder of Deeds in Allegheny

cluding his mother, two sisters and a family trust, of which Heinz is trustee. Heinz individually is the general partner.

<sup>7</sup> Heinz and his wife filed a joint income tax return for 1956, and the certificate of assessment lists Heinz and his wife as the taxpayers. (Govt. Ex. 12.)

<sup>8</sup> The notices of federal tax liens comprised the following amounts (Exs. 14, 15, 16):

| <u>Class of Tax</u> | <u>Taxable Period</u> | <u>Description</u>       | <u>Amount</u> | <u>Total</u> |
|---------------------|-----------------------|--------------------------|---------------|--------------|
| Income              | 1956                  | Deficiency in tax        | \$330,919.77  |              |
|                     |                       | Pre-arrangement interest | 137,145.84    |              |
|                     |                       |                          |               | \$468,065.61 |
| WT-FICA             | 4Q63                  | Balance due in tax       |               | 131.26       |
| FICA                | 4Q63                  | Additional tax           |               | 14.23        |
|                     |                       | Total                    |               | \$468,211.10 |

County, Pennsylvania, on April 7, 1964 (Ex. 14), with the Clerk of the District Court for the Western District of Pennsylvania on April 15, 1964 (Ex. 15), and in Los Angeles County, California, on April 7, 1964 (Ex. 16). On April 15, 1964, the Service filed a notice of levy upon the Mellon National Bank & Trust Company, trustee of the 1937 and 1948 spendthrift trusts, for \$469,749.47. (I-R. 90-91; Ex. 11.)<sup>9</sup>

In the meantime, early in 1964, the receiver and Heinz filed petitions with the referee for temporary stays of the California divorce proceeding and the Pennsylvania attachment proceedings pending confirmation of the arrangement proceeding. (I-R. 20-24, 27-29.)

<sup>9</sup> The notice of levy comprised the following amounts (Ex. 11) :

| <u>Class of Tax</u> | <u>Taxable Period</u> | <u>Description</u>                           | <u>Amount</u> | <u>Total</u> |
|---------------------|-----------------------|--|---------------|--------------|
| Income              | 1956                  | Deficiency in tax                            | \$330,919.77  |              |
|                     |                       | Pre-arrangement interest                     | 137,145.84    |              |
|                     |                       | Penalty                                      | 1,536.94      |              |
|                     |                       |  |               | \$469,602.55 |
| WT-FICA             | 4Q63                  | Balance due in tax                           | 131.26        |              |
|                     |                       | Penalty for failure to make a timely deposit | 1.43          |              |
|                     |                       |  |               | 132.69       |
| FICA                | 4Q63                  | Additional tax                               |               | 14.23        |
|                     |                       |  | Total         | \$469,749.47 |

Pursuant to authorization of the referee, it was stipulated by the receiver and the United States that the taxpayer's deficiency in income taxes for 1956 was \$162,366.52, plus statutory interest. (I-R. 131.) The Tax Court entered a decision to this effect on December 2, 1964.



On March 28, 1964, and on May 15, 1964, Heinz proposed in writing to the referee that he be permitted to pay out of the income from the spendthrift trusts \$12,000 a year to his wife, plus \$12,000 a year to himself, and the balance of this income to the arrangement estate for distribution to his creditors in their order of priority. This proposal was conditioned upon acceptance of his proposed plan of arrangement. (I-R. 91; Exs. 9, 10.)

In response to an application filed by the receiver (I-R. 46-50), the referee on September 18, 1964, held (I-R. 91-92) that the debtor's interest in the spendthrift trusts constituted property which vested in the arrangement estate free of and superior to any claim of Heinz, his wife <sup>10</sup> and the United States, on the grounds that prior to the filing of the petition for an arrangement under Chapter XI, i.e., on January 1, 1964, the United States as a creditor of Heinz could have assessed \$385.73 of unpaid F.I.C.A. taxes for the fourth quarter of 1963, or because Heinz had offered to subject his interest in the spendthrift trusts to payment to his creditors. The referee held that since the notices of federal tax liens had been filed and the levy had been made after the filing of the petition for an arrangement, they were of no force or effect as against the receiver. Holding that the taxpayer's interests in the spendthrift trusts were subject to the

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<sup>10</sup> The referee's holding that the receiver's interest in the trust proceeds was superior to that of Virginia Heinz presumably was based upon his finding that Heinz was not in default in alimony and child support payments when he filed the petition for an arrangement. (I-R. 89.)

exclusive jurisdiction of the arrangement estate, the referee restrained Heinz, his wife and the United States from proceeding with the Pennsylvania attachment actions and from asserting any claims against the trustee of the 1937 and 1948 trusts inconsistent with the referee's order. Heinz and his wife also were restrained from seeking payment of alimony, child support and attorneys' fees or proceeding further with the California divorce proceeding insofar as these affected payment out of the spendthrift trusts. Upon petitions for review filed by Virginia Heinz (I-R. 99-102) and the United States (I-R. 114-116, 125), the District Court affirmed the order of the referee (I-R. 141-144). Virginia Heinz (I-R. 224-225) and the United States (I-R. 233-235) have appealed the District Court's order to this Court.<sup>11</sup>

#### SPECIFICATION OF ERROR RELIED UPON

The arrangement court erred in holding that a federal tax lien and levy upon a taxpayer's income interest in a state-protected spendthrift trust is precluded by Chapter XI arrangement proceedings.

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<sup>11</sup> In addition to the present litigation and the pending Pennsylvania attachment suits and the California divorce actions there are other proceedings presently pending in the Orphans' Court of Allegheny County, Pennsylvania, wherein Heinz, his wife, the receiver and the United States, as well as others, are claiming payment out of the spendthrift trust funds. Upon a petition by the United States, the Orphans' Court on December 15, 1964, suspended distribution of the trust funds (with certain limited exceptions not in issue) and postponed an adjudication of the rights of the parties to the funds until a final determination is made in the present proceeding.



## SUMMARY OF ARGUMENT

Under Pennsylvania law, absent bankruptcy, the general creditors of the taxpayer could not reach his interest in the spendthrift trust income. The liability of a spendthrift trust for federal taxes has only a limited effect upon a spendthrift trust and does not destroy its exempt status as to other creditors. Section 6 of the Bankruptcy Act expressly preserves exemptions created or protected by state or federal law, and Section 70a provides that exempt property does not become part of a bankruptcy estate. Since a spendthrift trust is completely exempt under state law from the claims of general creditors, this property is wholly exempt from the jurisdiction of a bankruptcy court, and the latter has no jurisdiction to enjoin a federal tax levy upon the spendthrift trust income of the taxpayer.

Moreover, Sections 311 and 314 of Chapter XI of the Bankruptcy Act neither confer jurisdiction over exempt property to an arrangement court nor enable an arrangement court to defeat the Congressionally enacted policy to protect state exemptions from the reach of creditors; rather, these provisions merely enable an arrangement court to obtain exclusive jurisdiction over property of the debtor which passes to and becomes part of the arrangement estate.

## ARGUMENT

A Federal Tax Lien and Levy Upon a Taxpayer's Income Interest In a State-Protected Spendthrift Trust Is Not Precluded by a Chapter XI Bankruptcy Proceeding Since Such Property Is Exempt and Not Within the Jurisdiction of the Bankruptcy Court

The interest of the taxpayer, Clifford S. Heinz, in a spendthrift trust was created and is being administered under the laws of Pennsylvania. Pennsylvania law fully protects a spendthrift trust from the reach of general creditors of the beneficiary. *In Hays' Estate*, 201 Pa. 391, 50 A. 775; *In re Estate of Martin Dixon*, 101 Pa. Super. 152, affirmed, 306 Pa. 261, 159 A. 442; *In re Heyl's Estate*, 50 A. 775; *In re Beck's Estate*, 19 A. 302; *In re Coe's Estate*, 23 A. 383. It is thus clear that under Pennsylvania law, absent bankruptcy, the general creditors of Clifford Heinz could not reach his interest in the spendthrift income, either by any process of law afforded to creditors or by any voluntary assignment on the part of the beneficiary.

The Federal Bankruptcy Act does not enlarge upon creditors' rights so as to provide a means of defeating state-protected exemptions by recourse to either voluntary or involuntary bankruptcy proceedings. On the contrary, both Sections 6 and 70a of the Bankruptcy Act, as amended, Appendix, *infra*, expressly preserve such state law exemptions. These provisions are obviously necessary since otherwise the state exemptions would be nullified. The elementary principles of the federal-state relations involved are well stated in Scott, Spendthrift Trusts and the Conflict

of Laws, 77 Harv. L. Rev. (1964), 845, 860, as follows:

If by the law of the state which is applicable the interest of the beneficiary cannot be transferred by him and cannot be reached by his creditors, whether because of a state statute so providing or because of a provision in the terms of the trust, it cannot be reached by the trustee in bankruptcy. In *Allen v. Tate* a testator died domiciled in Pennsylvania creating a trust to be there administered under which a beneficiary was entitled to the income and ultimately to the principal. It was provided in the will that no part of the income or principal should be assignable or reachable by creditors. The will was probated in Pennsylvania. In a proceeding brought in a federal court in Missouri the beneficiary was declared bankrupt. The referee made an order of sale of the beneficiary's interest under the trust. The court held that the order should be set aside. It held that the trustee in bankruptcy could not reach the beneficiary's interest, since under the law of Pennsylvania, where the testator was domiciled at death and where the trust was administered and the property located, it could not be assigned or reached by creditors.

This policy is fully applicable to a Chapter XI proceeding, as well as any other bankruptcy proceeding. Chapter XI of the Bankruptcy Act does not grant the arrangement court jurisdiction over exempt property; rather it expressly provides that the exclusive jurisdiction of the bankruptcy court in arrangement proceedings must be consistent with the other provisions of the bankruptcy statute. It is, we think, amply

clear that the property of the debtor to which the provisions of Section 311 and 314 of the Bankruptcy Act, as amended, Appendix, *infra*, apply is property of the debtor subject to bankruptcy administration, and nothing in either Sections 311 or 314 authorizes the arrangement court to defeat the policy which protects state exemptions from the reach of creditors, whether by involuntary process or voluntary assignment.

The decision below, which is directly repugnant to the foregoing settled principles, rests upon the Referee's Conclusion of Law No. 1:

1. The Debtor's interests in the said spendthrift Trusts described in Finding of Fact No. 2 above constitute property which, prior to the filing of the Chapter XI Petition herein, could have been levied upon and sold under judicial process against him by the United States of America for unpaid taxes, or otherwise seized, impounded or sequestered by the United States of America for unpaid taxes.

But this rationale is fallacious. It is settled, as this Court has held, that spendthrift trust income, though exempt under state law from creditors, is not exempt from federal tax liability, since exemptions from federal tax are wholly matters of federal and not state law. Indeed, we think the case here is controlled by *Leuschner v. First Western Bank and Trust Co.*, 261 F. 2d 705 (C.A. 9th). In that case, as here, after the adjudication of the taxpayer in voluntary bankruptcy proceedings, and after the Government had filed a claim for its tax debt in those proceedings, the Government filed a lien and levied upon the bank-



rupt taxpayer's interest in a spendthrift trust for his education and support. This Court noted that the spendthrift trust is simply a statute of exemptions under California law and that (p. 708) "the paramount right to collect taxes of the federal government overrides a state statute providing for exemptions." The taxpayer in *Leuschner* conceded that the spendthrift trust could not be reached by his bankruptcy creditors but insisted that the tax lien and levy could not reach his personal interest in the spendthrift trust, which the bankruptcy court should protect for him by setting this interest aside for his benefit. But this Court held that (p. 708) "the filing of the notice of levy and seizure after the adjudication seems to preclude any jurisdiction over the lien by the bankruptcy court." It can hardly be argued that the instant case can be distinguished from *Leuschner* on the ground that here the general creditors, rather than the protected beneficiary, are seeking to protect the spendthrift trust against a federal tax lien and levy.

The liability of the spendthrift trust for federal tax is thus a limited liability which does not destroy its state-protected exemption from all other creditors. In this respect the federal tax liability has only the same limited effect as state-created exceptions from the protection of the spendthrift trust, as, e.g., payments for the support of a separated wife and children. Both liabilities create only specified exceptions, neither destroys the spendthrift trust.

Since the spendthrift trust is not part of the bankruptcy estate, it follows that the bankruptcy court

had no jurisdiction to enjoin the federal levy upon the spendthrift trust interest of the taxpayer. This proposition, too, has been long settled by *Lockwood v. Exchange Bank*, 190 U.S. 294. The Supreme Court there held (pp. 299-300) :

In other words, it is made as clear as anything can be, that such exempted property constitutes no part of the assets in bankruptcy. The agreement of the bankrupt in any particular case to waive the right to the exemption makes no difference. He may owe other debts in regard to which no such agreement has been made. But whether so or not, it is not for the bankrupt court to inquire. The exemption is created by the state law, and the assignee acquires no title to the exempt property. If the creditor has a claim against it he must prosecute that claim in a court which has jurisdiction over the property, which the bankrupt court has not.

We think that the terms of the bankruptcy act of 1898, above set out, as clearly evidence the intention of Congress that the title to the property of a bankrupt generally exempted by state laws should remain in the bankrupt and not pass to his representative in bankruptcy, as did the provisions of the act of 1867, considered in *In re Bass*. The fact that the act of 1898 confers upon the court of bankruptcy authority to control exempt property in order to set it aside, and thus exclude it from the assets of the bankrupt estate to be administered, affords no just ground for holding that the court of bankruptcy must administer and distribute, as included in the assets of the estate, the very property which the act in



unambiguous language declares shall not pass from the bankrupt or become part of the bankruptcy assets. The two provisions of the statute must be construed together and both be given effect. Moreover, the want of power in the court of bankruptcy to administer exempt property is besides shown by the context of the act, since throughout its text exempt property is contrasted with property not exempt, the latter alone constituting assets of the bankrupt estate subject to administration.

### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision below is erroneous and should be reversed and the injunction vacated.

Respectfully submitted,

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February, 1967.

## CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated: ..... day of ....., 1967.

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*Attorney*

## APPENDIX

Bankruptcy Act, c. 541, 30 Stat. 544 [as amended by Sec. 1, Act of June 22, 1938, c. 575, 52 Stat. 840]:

Sec. 2. *Creation of Courts of Bankruptcy and Their Jurisdiction.*—a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

\* \* \* \*

(11) Determine all claims of bankrupts to their exemptions;

\* \* \* \*

(15) Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act: *Provided, however,* That an injunction to restrain a court may be issued by the judge only;

\* \* \* \*

(11 U.S.C. 1964 ed., Sec. 11.)

Sec. 6. *Exemptions of Bankrupts.*—This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at

the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other State: *Provided, however,* That no such allowance shall be made out of the property which a bankrupt transferred or concealed and which is recovered or the transfer of which is avoided under this Act for the benefit of the estate, except that, where the voided transfer was made by way of security only and the property recovered is in excess of the amount secured thereby, such allowance may be made out of such excess.

(11 U.S.C. 1964 ed., Sec. 24.)

Sec. 70. *Title to Property.*—[as amended by Sec. 23(a) and (b), Act of July 7, 1952, c. 579, 66 Stat. 420]. a. The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this Act, except insofar as it is to property which is held to be exempt, to all of the following kinds of property wherever located \* \* \*

\* \* \* \*

(5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered: \* \* \*

All property, wherever located, except insofar as it is property which is held to be exempt, which vests in the bankrupt within six months after bankruptcy by bequest, devise or inheritance shall vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date when it vested in the bankrupt, and shall be free and discharged from any transfer made or suffered by the bankrupt after bankruptcy. \* \* \*

\* \* \* \*

(11 U.S.C. 1964 ed., Sec. 110.)

## CHAPTER XI—ARRANGEMENTS

### Article I—Construction

\* \* \* \*

Sec. 302. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent with or in conflict with the provisions of this chapter, apply in proceedings under this chapter. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 322 of this Act, and the date of adjudication shall be taken to be the date of the filing of the petition under sec-



tion 321 or 322 of this Act except where an adjudication had previously been entered.

\* \* \* \*

(11 U.S.C. 1964 ed., Sec. 702.)

Sec. 311. Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located.

\* \* \* \*

(11 U.S.C. 1964 ed., Sec. 711.)

Sec. 314. The court may, in addition to the relief provided by section 11 of this Act and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor.

\* \* \* \*

(11 U.S.C. 1962 ed., Sec. 714.)

Internal Revenue Code of 1954:

#### SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addi-



tion thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1964 ed., Sec. 6321.)

#### SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority of Secretary or Delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States, the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401 (d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) *Seizure and Sale of Property.*—The term “levy” as used in this title includes the power of

distrain and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) *Successive Seizures*.—Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary or his delegate may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

\* \* \* \*

(26 U.S.C. 1964 ed., Sec. 6331.)

#### SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) *Enumeration*.—There shall be exempt from levy—

\* \* \* \*

(c) *No Other Property Exempt*.—Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

(26 U.S.C. 1964 ed., Sec. 6334.)

SEC. 6871. [as amended by Sec. 88(a), Technical Amendments Act of 1958, P.L. 85-866, 72 Stat. 1606]. CLAIMS FOR INCOME, ESTATE, AND GIFT TAXES IN BANKRUPTCY AND RECEIVERSHIP PROCEEDINGS.

(a) *Immediate Assessment*.—Upon the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, the approval of a petition of, or against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided by law) determined by the Secretary or his delegate in respect of a tax imposed by subtitle A or B upon such taxpayer shall, despite the restrictions imposed by section 6213 (a) upon assessments, be immediately assessed if such deficiency has not theretofore been assessed in accordance with law.

\* \* \* \*

(26 U.S.C. 1964 ed., Sec. 6871.)

